



STATE OF WASHINGTON

STATE BUILDING CODE COUNCIL

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MINUTES

STATE BUILDING CODE COUNCIL

Date: January 8, 2010

Location: Senate Hearing Room 3, Olympia

Council Members Present: John Cochran, Chair Pro Tem; Ray Allshouse; Rod Bault; John Chelminiak; Kristyn Clayton; Angie Homola; Robert Koch; Jerry Mueller; Tien Peng; Dale Wentworth; Ron Fuller; Representative Bruce Dammeier; Representative Timm Ormsby

Council Members Absent: Mari Hamasaki

Visitors Present: Eric Lohnes, Bob Eugene, Jeanette McKague, Kraig Stevenson, Paul O'Connor, Chuck Murray, Garrett Huffman

Staff Present: Tim Nogler, Krista Braaksma, Sandra Adix

CALL TO ORDER

In the absence of the Council Chair and Vice Chair, Tim Nogler said Council bylaws require appointment of a Chair Pro Tem.

Motion #1:

Representative Bruce Dammeier moved the appointment of John Cochran as Council Chair Pro Tem. Representative Timm Ormsby seconded the motion. The motion was unanimously adopted.

John Cochran, Chair Pro Tem, called the meeting to order at 10:10 a.m. John welcomed everyone. Introductions were made. John noted that a voting quorum of members is in attendance.

REVIEW AND APPROVE AGENDA

Tim specified that “Legislative Committee” will include a discussion of a Council response to the objection by the Joint Administrative Rules Review Committee (JARRC) to the Council’s rulemaking process. In addition, “Other Business” includes a discussion of a staff legislative project from the Department of Commerce. With those additions, the amended agenda was approved.

REVIEW AND APPROVE MINUTES

John Cochran said there are four sets of meeting minutes before the Council: October 29, November 12, November 20 and December 18. Tim noted that the October and first November meeting minutes were previously mailed out to Council members and interested parties. The second November and December meeting minutes are new, just completed.

The minutes of the October 29 meeting were approved as written. Bruce Dammeier amended the November 12 minutes on page 26, changing the name of the state’s chief economist from “Chang Mook Sohn” to “Dr. Arun Raha.” Thus the November 12 minutes were approved as amended. Approval of the minutes of the November 20 and December 18 meetings was postponed until the March 12 Council meeting, to allow time for review.

PUBLIC COMMENT ON ITEMS NOT COVERED BY THE AGENDA

Kraig Stevenson, representing International Code Council (ICC)

To be real quick, I brought a news release in regard to the first integrated green construction code, that’s posed by ICC to be delivered out for public comment on March 15. So 65 days away, we have the opportunity of the Council to take a look at that and other interested players. It’s important that particular time to take a look at it to make public comment.

So I’m going to give staff some information on frequently asked questions, the development schedule and this news release, so that they can distribute it not only to new Council members, but maybe put it in a mailing so that people are aware of just exactly what the International Green Construction Code is, what the scope of it is, who’s been serving on the committee, what the topics of coverage are, because this is an interest to many state and local governments as they look toward green construction regulations that they will need to fit in with their building code. And this is a code that is going to address high performance commercial buildings and regular performing commercial buildings, whereas the national green building standard already exists for residential construction.

So I just wanted to make you aware of that. I know that on the Council agenda today you’re going to be talking about your 2010 workplan. You might want to form an ad hoc

committee to be able to report to the Council, their thoughts, their thinking about what this document is. And again, it will be out in about 65 days.

Angie asked Kraig how to find the document. Kraig said it's on ICC's website. He'll send the link to Krista Braaksma to distribute to Council members.

ELECTION OF OFFICERS

John Cochran opened the floor for nominations to fill the open positions of Council Chair and Vice Chair, given the retirement of Peter DeVries and Jon Napier.

Motion #1:

Kristyn Clayton nominated John Cochran as Chair of the Council. Ray Allshouse seconded the motion. Lacking other nominees, John Cochran was unanimously elected to serve as Council Chair.

Tim noted that anyone, including ex officio Council members, may make nominations.

Motion #2:

Ray Allshouse nominated Kristyn Clayton to serve as Vice Chair of the Council. Robert Koch seconded the motion. Lacking other nominees, Kristyn Clayton was unanimously elected as Council Vice Chair.

Tim said Committee appointments need to be made. He asked for a nomination for Chair of the Building, Fire and Plumbing (BFP) Codes Committee, which has been chaired by John Cochran. As Council Chair, John Cochran is a member of all Council Committees.

Motion #3:

Tien Peng nominated Ray Allshouse to serve as Chair of the Building, Fire and Plumbing Codes Committee. Kristyn Clayton seconded the nomination. Lacking other nominees, Ray Allshouse was unanimously elected as Chair of the Building, Fire and Plumbing Codes Committee.

Tim said Mari Hamasaki, who isn't present at this meeting because of illness, serves as Chair of the Mechanical, Ventilation and Energy (MVE) Codes Committee. Other chairmanships are John Chelminiak as Chair of the Legislative Committee and Dale Wentworth as Chair of the Economic and Regulatory Assessment Committee (ERAC).

Tim welcomed volunteers to serve on the Standing Committees. There are a number of Council members who have completed their terms and no longer wish to serve. He said he's expecting new appointments to be made by the Governor next week

Tim summarized current Committee memberships:

- BFP Committee includes Ray Allshouse, Rod Bault, Angie Homola, Dale Wentworth, John Cochran
- MVE Committee includes Mari Hamasaki, Kristyn Clayton, Jerry Mueller, Tien Peng, Dale Wentworth, John Cochran
- Legislative Committee includes John Chelminiak, Kristyn Clayton and John Cochran
- ERAC includes Dale Wentworth, Kristyn Clayton and John Cochran
- Executive Committee includes John Cochran, Kristyn Clayton, Ray Allshouse, Mari Hamasaki, John Chelminiak and Dale Wentworth

Angie Homola expressed interest in serving on the Legislative Committee. Tim said the Legislative Committee meets during legislative session by conference call every Thursday at 1 p.m. Krista said each Thursday morning during session information is sent to members about whether or not a Legislative Committee conference call will be held. Tim said Thursday morning is when the Legislature publishes its meeting schedule for the following week. Angie said a conflict may prevent her participation in Legislative Committee conference calls. Ray said he would like to serve on the Legislative Committee. Tim said Ray and Angie will both be added to Legislative Committee membership.

Tim asked any other members who want to be added to a Committee membership to let him know. John Cochran said new members, as appointed to the Council by the Governor, will also be added to Committee membership. Tim agreed, saying the Council bylaws establish a process for appointing members. He also noted that appointed members are voting members. Other Council members may attend and participate at Committee meetings but may not vote unless they are appointed members.

Tien Peng offered to serve on the Ad Hoc Committee on Green Construction when it's formed, perhaps as chair. John Cochran said creation of that ad hoc committee will be discussed more under the next topic, 2010 Workplan. Ron Fuller expressed interest in participating on the Legislative Committee. Bob Koch asked to be a member of the BFP Committee.

John Cochran asked about the composition of technical advisory groups (TAGs). Tim answered Council bylaws say TAG members include one voting Council member, usually serving as TAG Chair, and interested parties appointed by the Council Chair or Standing Committee Chair. He

said since this is the first year of a three-year cycle, TAG workplans haven't been developed yet. The composition of TAGs is usually discussed at the March meeting.

PROPOSED 2010 COUNCIL WORKPLAN

John Cochran reviewed the draft workplan for 2010. He said the first action item is creating an ad hoc committee to study the process, policies and principals of Council operation. Tim added the intent of this ad hoc committee is to suggest bylaw and WAC revisions. He said the Executive Committee has been tasked with reviewing policy issues in the past. John Cochran asked if each subtask should be assigned to a specific Council member. Tim suggested two options: creating a special ad hoc policy committee or assigning policy review to the Executive Committee and letting that committee task out the subactions. Kristyn asked if other Council members may attend Executive Committee meetings. Tim answered that anyone can attend Executive Committee meetings. They are subject to the Open Public Meetings Act. Voting, however, includes only John Cochran, Kristyn Clayton, Ray Allshouse, Mari Hamasaki, John Chelminiak and Dale Wentworth. Consensus was to have the Executive Committee review and recommend changes to Council process, policies and principals.

Tim said the second action item, improved communication within the Council, is more logistical. He sees this work as staff-oriented. It includes an orientation session, once new Council members have been appointed. It will probably be held in conjunction with a Council meeting, possibly in March.

Tim said Tom Kinsman made some suggestions about Council process: about publishing the proposed rule document so it's more easily understood; about the numbering system used for code change proposals; about the timeliness of distributing documents prior to meetings. Tim suggested the recording system used at Council meetings may need to be upgraded. Another issue is the method to be used for meetings. Constituent concerns have been voiced in the past when the Council has held special meetings. Some TAGs have experimented with conference call meetings, in an effort to ease participation. There are, however, some challenges to be worked out to include visitors in conference call meetings.

Timm Ormsby said orientation about the Administrative Procedures Act (APA), the Open Public Meetings Act and the Ethics law would be very helpful to legislative members. Sandra Adix said she's very happy to do some training segments, with perhaps a PowerPoint presentation. Angie agreed with Timm that such training is very important. She suggested holding a discussion about parliamentary procedure at the beginning of each year.

Tien suggested Sandra record a video about such procedural questions that new Council members can access on line. They could watch it after they're appointed and e-mail Sandra with any questions they have. Sandra agreed that may be something the Council wants to do. She said she's always willing to spend a few minutes at meetings answering questions. John Cochran agreed such a video is a good idea.

Timm asked if the Council operates under Robert's Rules or Reed's Rules. Tim answered Council bylaws reference Robert's Rules. Tim suggested not using acronyms without first defining what they stand for.

Kristyn said she views the second action item as overlapping closely with the first. Everyone agreed there is crossover. Consensus was for staff to report to the Executive Committee about improved Council communication.

John Cochran said the third action item is tracking of the 2012 ICC/IAPMO code development process. Tim repeated this is the first year in a three-year code development cycle. A difference this year in the ICC process is final action hearings will be held in May and September on the 2012 code editions. Tim views this as a positive improvement, giving the Council more time to compare the codes and define differences. He said the 2012 editions will be published in the spring of 2011. Council staff attends the ICC final action hearings and encourages Council members to also attend. Washington State has a number of proposals that will be considered at the hearings. John Cochran agreed with Tim that the timing this year will work better for Washington.

Angie asked for confirmation that the May and September ICC hearings will be for the 2012 codes. Tim agreed. He said the May hearings will be held in Dallas, Texas and the September hearings will be held in Charlotte, North Carolina.

John Cochran said the question of whether or not the Council wants to create an ad hoc committee or TAG to study the International Green Construction Code (IGCC) is important, because ultimately the Council will have to decide whether or not to adopt the IGCC. Kristyn said the Council talked last year about moving forward with the sustainability or green code. Unfortunately, with the emphasis on energy in 2009, it was deferred. She's happy to see it on the workplan for 2010. Seattle already has a green code, and now ICC's national code will be available in another couple of months.

Tim asked whether the Council wants to form an ad hoc committee or a TAG to study the IGCC. He said the biggest difference is that a committee would be composed of Council members, whereas a TAG would be composed of expert professionals in the building profession. Last year, the Council talked about a TAG, reporting to the MVE Committee. Kristyn agreed. She said there are various developments in this area, Portland green cities and green certification by ASHRAE.

Tim outlined the process for forming a TAG:

- A notice is sent to interested parties.
- A list of proposed TAG members is compiled from interested parties who apply. The Council approves who TAG members represent.
- The Committee Chair, Mari Hamasaki in this case, appoints TAG members from the draft list in conjunction with the Council Chair.

Tim noted that there is a green building code already being published, in addition to the International Green Construction Code mentioned by Kraig Stevenson. And there is proposed legislation being introduced this session that deals with green building. Kristyn suggested the TAG look at everything, all green standards and certifications.

Kraig Stevenson applauded the Council's decision to quickly move forward with an IGCC TAG. He said waiting to review the code in its final form eliminates very important opportunities to review proposed legislation and receive public comment on the development of the document. It allows the Council to shape the model document to better fit its needs. Kristyn agreed, saying upfront participation in the ICC process before publication is really important. She said Council action before the document goes into its final form is critical.

Angie commended Council staff and members for progressive, forward thinking. She supports Kraig's comments, noting that not acting may leave the state in the "jobless market."

Motion #4:

Kristyn Clayton nominated Tien Peng as Chair of the new Green Building Code TAG. Ray Allshouse seconded the motion. The motion was unanimously adopted.

Ray suggested inserting an additional bullet under the MVE Committee to integrate the 2009 Washington State Energy Code (WSEC) with Chapter 11 of the International Residential Code (IRC) as a separate action from integration with the International Energy Conservation Code (IECC). Kristyn said she views that as part of the first action item. John Cochran agreed. Ray said it's important to establish everyone's mindset that there's a separate, largely prescriptive path that is reflected in Chapter 11 of the IRC. He said structures that fall under the jurisdiction of the IRC are not under the IECC.

Bob Eugene, Underwriters Laboratories, said Proposal RE4 in recent floor action on energy code provisions would have eliminated the differences between IRC residential requirements and those in Chapter 6 of the IECC. While that proposal didn't pass, the process may be simplified. Kristyn said a simple separation currently isn't the answer because there's much confusing overlap between the IRC and IECC.

Angie said it would be very helpful if members of the public testifying state their name and agency for the record. Bob Eugene apologized to Angie, giving his full name and affiliation with Underwriters Laboratories.

John Cochran welcomed Rod Bault, the newest Council member. Rod represents the disabled community.

Returning to the WSEC/IECC conversion, Tim said the intent of the workplan is to have the conversion as a committee item under the MVE. There has been much discussion about the process of the conversion. A consultant has been suggested to develop a draft for the MVE Committee to consider. Kristyn said when the Energy Code TAG compared the codes in the past, that comparison included ASHRAE 90.1, the WSEC, the IECC and the IRC. Rather than crafting language during that comparison, the TAG simply said, “thumbs up, thumbs down, change this, change that.” Her humble opinion, having worked with the Energy Code TAG for 12 years, is that it’s almost an impossible task for that dedicated TAG group to reach a consensus agreement on language. TAG expertise is to “pick apart someone else’s work.” Tim said the intent is to have Council staff work with a consultant to develop language, using previous TAG work, which will then be reported to the MVE Committee. The Committee will then decide what the next step is in the process.

Kristyn said she views the first step in the process as going back to the previous TAG work and making revisions. She doesn’t believe having regular weekly meetings is in anyone’s best interest. Kristyn sees the Energy Code TAG in the process, briefly, between the consultant and the MVE Committee. Kristyn said, “I think that we go back, re-review what we’re looking at, get our arms around the scope, and then let the staff get a consultant to put together the rock.” Angie asked Kristyn to define “rock.” Kristyn said it’s the 147 amendments required in the IECC and IRC to bring those documents into parity with the WSEC. She said the TAG determined that Washington could not adopt the IECC or energy provisions in the IRC outright because doing so would unlawfully reduce stringency. Tim said the rock is the 2012 IECC code document with strikeout and underline notations, so changes to the base document are readily apparent. John Cochran asked then if the IECC is the base document. Tim and Kristyn said both the IECC and IRC are the base documents.

Tim said the second bullet item under the MVE Committee, energy code strategic planning, will be discussed under “Other Business” later in the agenda by Department of Commerce staff.

Tim said the first bullet item under the BFP Committee deals with new accessibility guidelines to be published by ICC later this month, 2008 ANSI A117.1. ANSI standards will be referenced in the 2012 International Building Code (IBC). Tim said adoption of those standards isn’t anticipated in 2011, but the BFP Committee will decide what type of review will be done prior to future adoption. Tim told Rod Bault that he was appointed to the BFP Committee.

John Cochran asked Tim if Council action is required on the 2010 workplan. Tim said Council consensus about the Green Building TAG and the Executive Committee process will be implemented. Training will be scheduled, for the March meeting if all new members are appointed by then.

LEGISLATIVE UPDATE

Tim discussed a proposed response to the Joint Administrative Rules Review Committee (JARRC) about their objection to the Council's rulemaking process for the 2009 WSEC. He said a public hearing has been scheduled for February 12, the second Friday in February. The date for that meeting has been filed with the Code Reviser for publication in the State Register. A meeting notice will be distributed to all interested parties. The meeting is specifically intended to be a special meeting to receive public comment on the findings of the JARRC. The meeting location is the Seattle Area Pipe Trades in Renton.

The draft response to the JARRC basically advised that the Council was required by the Administrative Procedures Act (APA) to hold a public hearing and provided details about the February 12 public hearing. Tim said modifications that were received from Angie Homola have been incorporated into the draft. It also informs the Governor's Office and the legislative energy committee chairs that the Council is holding a public hearing.

Tim said the rule will be filed on January 20. The final rulemaking order includes an updated cost benefit analysis based on the final rule. There was a variance between the proposed and final rules. At the Council's November 20 meeting, 15-16 amendments were adopted.

Tim said the Council needs to decide now how it wishes to proceed with the draft memorandum to the JARRC, legislative chairs and the Governor.

Ron Fuller asked if the February 12 public hearing will be teleconferenced to Council members. Tim said yes, that's possible at the Pipe Trades.

Tien asked what happens after the rule is filed. Tim answered that the normal process for rules is to sit through a legislative session before enactment. He said anyone can normally petition for either a gubernatorial or a judicial review. This year, however, the JARRC has exercised its authority to publish an objection in the State Register, to request that legislation be introduced in the 2010 session to suspend WAC 51-11, the WSEC, and has requested the Governor to suspend the rule.

John Cochran asked if the draft memorandum will go to the JARRC. Tim answered it's intended to go to the Governor and the chairs of legislative energy committees, as well as to the JARRC. He said the JARRC has made its ruling. Nothing will change that ruling.

Motion #5:

For the purposes of discussion, Representative Timm Ormsby moved to approve submission of the response to legislative energy committee chairs, the Governor, and the JARRC. Angie Homola seconded the motion.

Bruce noted the JARRC ruled on the rulemaking process, not on the rule itself. Referring to Angie's amendment on page 1 of the draft, Bruce cautioned about Council members challenging "whether legislators are smart enough to understand what they're seeing." Angie agreed. She suggested striking "too detailed for some JARRC representatives." She said there was concern that the economic impact didn't provide what was asked. Information that was provided received comments from the JARRC that it was too detailed. What she was trying to convey is that all the work that went into energy code change proposals is inherently very complex. She wants to clearly state that all the work was done and it is very detailed. John Cochran suggested "sufficiently detailed" instead of "too detailed." Timm confirmed Angie's statement, saying that at the December 2 JARRC meeting, the JARRC Chair said, "We are not a policy committee. This level of detail is not our jurisdiction." Timm said the JARRC wasn't interested in looking at the body of evidence that the TAG or the Council looked at. Rather they wanted to know that the body of evidence was sufficient enough for the Council to make an informed decision. Timm said the Council's response letter says that the data was sufficient.

Kristyn said she thinks "sufficiently detailed" is too subjective. She said the bottom line is that information provided by the Council was considered to be too detailed and not responsive to the JARRC's request. Bruce added that the paragraph in the middle of page 7 speaks to the complexity.

Timm said the Council response might acknowledge that given the size of the agency and the focus of staff on technical code issues, the 11th hour request by the JARRC wasn't handled as well as it might have been.

Kristyn apologized for not participating in the Council's December 18 conference call meeting. She noted that the Energy Code TAG addressed small business concerns, providing adequate hearing time and holding special meetings. TAG members worked hard with small business representatives, negotiating to develop compromises. The motion made and voted on at the first JARRC meeting was to request a small business economic impact statement, including job impact, for all 97 energy code change proposals, not just those proposals that affect small business. Kristyn said most of the 97 proposals don't affect small business. For that reason, she said the JARRC request unfairly complicated the issue.

Ron said the response talks about two issues, the process and the documents submitted. He suggested clearly identifying the type of documents submitted, despite the fact that the JARRC's concern seems to be with process rather than the technical information. Ron suggested modifying the fourth paragraph of the Council response to read:

The Council did however provide extensive supporting, technical documents to the JARRC, which were considered to be too detailed ~~for~~ by some JARRC representatives. This exemplifies the highly technical nature of the construction industry and code knowledge. ~~It is precisely why the State Building Code Council was created, to alleviate the legislative body from~~

~~this intensive research process and to avail advisory committee expertise and best available science to the rule making process.~~

Tim said Angie suggested deleting the reference to “~~for~~ by some JARRC representatives” and inserting “and not responsive to their concerns.” Angie agreed, but she wasn’t sure about deleting the last sentence. Timm suggested the statement in the last paragraph, “The legislature has placed a significant responsibility...,” addresses the same thing. Ron said his deletion is based on that duplication. Angie said she prefers the statement made earlier in the document, not at the very end.

Bruce noted that the term “found” is used three times on page 5. He said that term implies a vote or official distinction. He doesn’t recall a vote being taken on any of those issues. He suggested caution, because meeting minutes reflect all Council votes. Angie agreed that “found” should be replaced by something implying opinion or suggestion. Timm said he believes a vote taken at the November 12 Council meeting reflects findings of the Council. He suggested saying, “the majority vote.” Kristyn suggested, “By a majority vote, the Council suggested...” Tim noted that Ray suggested “a majority of the Council” rather than “Council majority.”

Angie modified the first paragraph under Job Impacts to read: “A majority of the Council suggested that failing to adopt meaningful energy saving codes would have a long term negative economic impact on the building industry and on building owners due to lost energy savings. The Council suggested that not making forward progress...”

Kristyn corrected an incorrect figure in the second paragraph under Job Impacts. She said the number of “green building” jobs that will occur nationally is 2.3 million. Those jobs are construction, not ancillary jobs. Washington State will see 1/50 of that number of jobs.

Timm questioned appropriate documents to attach to the letter. He said it’s important not to discourage examination by the JARRC members because of the letter’s sheer volume. John Cochran suggested perhaps doing a one-page executive summary, accompanied by a more lengthy document they may or may not wish to read.

Kristyn said the USGBC Green Jobs Study report is very factual. It used a detailed methodology. Angie asked Sandra if it’s too late to attach documents, such as the USGBC Green Jobs Study, that were not previously submitted to the JARRC. Sandra said it’s not appropriate if it wasn’t available during rulemaking. Kristyn said it was not.

Timm asked what the Council referred to in its decisionmaking process about job and economic impact. Kristyn said small business representatives told the Energy Code TAG that energy code change proposals would put them out of business. Tim said that a representative of the Seattle Jobs Initiative spoke at a special meeting of the Economic and Regulatory Assessment Committee about their training program and jobs availability. In addition, Council staff worked with the Governor’s Office and Office of Financial Management (OFM) forecasting staff to

develop jobs analysis data. Tim referred Timm to the last paragraph under Job Impacts. He said OFM is in the process of developing methodology to track job creation. Timm suggested it would be helpful to specifically mention OFM in the letter. He said the Legislature has to accept OFM's fiscal notes for legislative cost impacts.

Bruce asked at what point in the process OFM was involved. Tim answered OFM forecasting staff was included during the rulemaking process, after the first JARRC hearing. Kristyn said it was in early October. Tim said the conclusion was that the job impact was indiscernible. There was no report to present. It simply confirmed what was filed in the SBEIS. At the November 12 meeting, a motion was made that the original SBEIS was sufficient. Nothing from OFM contradicted that. Kristyn asked how Council staff was notified. Tim said correspondence was received from OFM that job impact was indiscernible.

Angie said anything that was part of the public hearing process and in Council public meetings and minutes is germane. Any supporting document would be legal to attach as long as it was part of the rulemaking. Kristyn said correspondence submitted by OFM during rulemaking would also be legal. Bruce said the Council had to see such OFM correspondence. Submission to Council staff doesn't make it a part of rulemaking, because Council members form the rulemaking body. Tim said the record references OFM correspondence. Bruce asked to be shown where the minutes contain that reference. Timm asked Sandra to evaluate the appropriateness of the OFM correspondence. Sandra said it's legal to attach anything that was part of the rulemaking process as a supporting document.

Bruce questioned a comment on page four, middle paragraph, last sentence, "After adopting 15 amendments to further mitigate the economic and stringency impacts, the Council voted unanimously to adopt the remainder of the changes to the Energy Code." He thinks it should read, "...voted unanimously to adopt the Energy Code." Other Council members agreed. Referring to the same sentence, Bruce said he doesn't recall all 15 amendments dealing with cost. The meeting minutes say four dealt with cost, one was about a cost increase, and one was a cost increase with no savings. Bruce said the Council should be cautious about implying that all 15 amendments dealt with cost, because all did not. Timm suggested, "After adopting 15 amendments, the Council voted unanimously to adopt the Energy Code." Consensus was obtained on Timm's suggestion. John Chelminiak noted that the adoption of all those amendments resulted in a net positive economic impact, but not all 15 amendments dealt with economic impact. Others agreed.

Given all the scrutiny Council rulemaking is facing, Bruce said it's very important that Council meeting minutes support all assertions made by the Council. He cautioned the Council about "changing the record after the fact."

On page 2, Bruce amended the last sentence of the middle paragraph: "The Council received extensive testimony and experienced significant ~~tension~~ debate about the long term direction of the Energy Code in relation to the 2009 amendments."

Ray pointed out a typo on page 7: "...term preservation of ~~economic~~ economic stability,..." Also on page 7, Kristyn questioned the statement, "The cost impacts and energy savings of the adopted code will be less." Timm noted the preceding sentence talks about Energy Code TAG recommendations. He asked if 30 percent was achieved by TAG recommendations and 15 percent energy savings were achieved with the adopted amendments to the Energy Code. Kristyn said her preference is to delete that sentence. Tim said the note at the bottom of page 7 from Angie explains why cost and energy savings are different.

John Cochran suggested that the second sentence in the second paragraph on page 7 read: "The Council appreciates your attention to the building code adoption process, and wants to ~~be~~ ensure that all decisions..."

Timm asked the methodology used for the Northwest Power Sixth Plan data. He would like to know if cost estimates were based on computer modeling or actual receipts. Chuck Murray, Commerce Energy Policy, said computer simulations are used to estimate the energy use of buildings. Most cost data was drawn from the Power Plan. All of the building envelope and electrical equipment data came from the Power Plan. However, data about gas furnaces was obtained from the U.S. Department of Energy's rules development for equipment efficiency. DOE cost studies include manufacturing cost impacts, economic impacts of the marketplace other than manufacturing, and consumer cost impacts.

Bruce asked if projected savings are based on computer modeling. Chuck answered yes.

Angie asked about the reference to the tables on page 7. Tim said information in the tables will be revised.

John Cochran called for the question on Motion #5.

Amendment to Motion #5:

Angie Homola moved a friendly amendment to Motion #5 to accept the previously discussed modifications. Representative Timm Ormsby seconded the motion. The amended motion was unanimously adopted.

Timm asked if Tim will distribute the revised response to Council members before it goes out. Tim said he will.

Tim said the Legislative Committee meets by conference call each Thursday during session at 1 p.m. A tracking log of all legislation that may affect the Council is distributed to all Council members each Thursday morning.

Commerce Reorganization Bill

Tim said this bill will be prefiled today as agency-request legislation from the Department of Commerce. So the bill number hasn't yet been assigned. It moves the Council from the Department of Commerce, formerly the Department of Community, Trade and Economic Development, to the Department of Labor and Industries (L&I).

Tim said he's met with L&I about the logistics of moving there. He's also met with Architectural and Engineering Services Program staff at the Department of General Administration (GA). He thinks the Council coordinates better with GA than L&I. Architectural and Engineering Services is composed of professionals who review building projects. The Council has participated with them in the past doing plans review for building accessibility.

Tim has been in contact with the Legislative Liaison at the Department of Commerce. They are aware that the Council may favor amending the bill to move to GA rather than L&I.

From a budget standpoint, the Council would do well in either GA or L&I. The concern of both agencies is the possibility that the Council may be a financial burden to them. However Tim noted that Council revenue has exceeded its expenditures for the last 10 years. Historically at the Department of Commerce, the Council pays approximately 38 percent of salary and benefit costs for indirect administrative support. Per year, it amounts to about \$150,000 out of a \$500,000 budget.

Tim said the Council should work with constituent groups and with ex officio legislative members about where to move.

John Cochran asked if it would help if the Council were to write a letter endorsing one agency over another. Tim answered yes, that would be helpful.

Motion #6:

Representative Bruce Dammeier moved to appoint John Cochran as the Council representative regarding legislation to move the Council. Angie Homola seconded the motion.

John Cochran said he was going to volunteer to work with Tim about the move. John Chelminiak suggested that the Legislative Committee have a role in the question about the Council's location. John Cochran said it will be discussed further Thursday at the Legislative Committee conference call.

The question was called for on Motion #6. The motion was unanimously adopted.

SB 5120

Tim said SB 5120, held over from last session, received a hearing at the Joint Legislative Audit Review Committee (JLARC). This bill directs the State Auditor to review building permits issued locally and the process for the State Building Code Council charging a fee. The intent of the bill is to exempt agricultural buildings from building permit fees.

The State Auditor issued a report, available on the Council website, which examined the administrative and financial procedure for charging building permit fees in six counties. The report's recommendation was to amend the laws relating to flexibility that cities and counties have for allocating the funds from building permit fees. Current law is pretty inflexible, allowing funds to be allocated only for plan review, inspection or other directly related administrative costs.

At the hearing last week, concern was voiced to exempt or limit the building permit fees for agricultural buildings. The report of the State Auditor didn't address that issue. It was suggested at the hearing that the State Building Code Council set the fees for cities and counties. While Tim didn't talk to them, he believes the chair and members of the JLARC understand that the Council has never set building permit fees for cities and counties. That duty has specifically been delegated to local jurisdictions.

Tim said SB 5120 will be monitored.

Speaking from the perspective of a plans examiner, Angie said it's very difficult to make fees for given permits specific to just plan review and inspection. Overhead costs and many unintended consequences complicate the issue. She said some of the concerns raised about this legislation last year were how to define an agricultural building and whether such buildings should be exempt from permitting.

Jerry Mueller asked how the JARRC letter relates to the February 12 public hearing. Tim said the letter will be published and distributed to the public. The purpose of the public hearing is to receive public comment about the letter. Timm added that it informs the public about legislative action.

Timm made some general comments about the JARRC objection. He said the Legislature is jealous of the Council's budgetary and funding authority, as well as their rulemaking authority. Agency rulemaking is controversial. It has the force of law. Many times the Washington Administrative Code (WAC), adopted by agencies, is an interpretation of statutes in the Revised Code of Washington (RCW), adopted by the Legislature. Timm said it's important that the Legislature honor the work of the Council.

Tim discussed SB 6244, prefiled legislation that requires the Council to write a code defining "green building." He said there are some technical errors in this bill, such as switching R-2 and R-3. Single-family construction is R-3, rather than R-2, which is multifamily. The Legislature

gives the Council until July 1, 2010 to define “green building.” Tim said they don’t understand that it takes the Council a full year to do any kind of rulemaking.

Kristyn asked who the proponents of SB 6244 are. Tim said he doesn’t know who’s pushing it. Timm suggested the Council was given the definition task because it appeared to be within the purview of the Council, similar to JLARC giving the Council the task of setting building permit fees. He said it was done more by default than anything else.

OTHER BUSINESS

SSB 5854 – WSEC strategic planning committee

Chuck Murray, Department of Commerce, Energy Policy Division, said SSB 5854 was enacted last year. That bill creates a strategic plan by the Department of Commerce to advance the energy efficiency in new buildings. A partner in this plan is the State Building Code Council.

“The department and the council shall convene a work group with the affected parties to form the initial development of this strategic plan.”

Chuck said the proposed workplan is for him to develop an outline of what will be included in the strategic plan over the next month. After refining it with the NEB Committee, the Council will review and comment on it in February. Creation of the work group will be discussed in February or March. The bill says the Strategic Planning Committee will make recommendations for code. Chuck said he sees that as a step above code development.

Since the bill asks for measurement of achievement, energy efficiency targets specified by the state Legislature will be discussed, including to what extent they have been achieved. Cost effectiveness is another consideration that will be discussed. Chuck said this will be a good opportunity to define measurement and cost benefit for future Council work.

The strategic plan also includes recommendations for research and demonstration, as well as education and workforce training. The questions of how to handle utility issues as the loads of the buildings go down, how low-energy buildings impact utilities, and how district heating and combined heat and power get incorporated into the regulatory environment for buildings are other issues to be discussed. And finally, the bill also asks that the embodied energy in building materials be analyzed.

Chuck said the deadline for completion of the strategic plan in 2010 is December 1. He added that a strategic plan is intended to be completed every three years.

Electric Vehicles

Chuck asked for a Council volunteer to serve on a committee designated by legislation to develop a model ordinance for electric vehicle charging stations. He said an electric vehicle charging station can be as simple as a plug in the wall or as complicated as an automated battery changing station. The manufacturers of applicable products have provided sample language for an ordinance. Chuck said he expects much of the work to be done in the Seattle area. Ray Allshouse volunteered to serve on the committee.

John Chelminiak said he believes this originated through the Puget Sound Regional Council. In the short-term, Chuck said the intent is to support the introduction of the Nissan electric vehicle. He said the Seattle area was chosen as a demonstration area for that particular introduction.

Tim said the model ordinance will help define what an electric vehicle infrastructure is and whether or not the Council needs to adopt rules for an infrastructure. At this point, it has been determined that both the International Fire Code and the International Building Code will not have to be amended to cover electric vehicle infrastructure.

Ron Fuller said one question which faced him about electric vehicles is if the electric codes are in place. He said they are. The questions of how many charging stations are needed and where to locate them is unknown, not presently covered in the codes. He said those issues will be controversial. Tim suggested the location may be discussed in the model ordinance.

Residential Fire Sprinklers

Tim said he's been contacted by Todd Short, Redmond Fire, on behalf of the Washington State Association of Fire Marshals, asking about the recently adopted 2009 International Residential Code (IRC). The residential fire sprinkler requirement for one- and two-family dwellings and townhouses was adopted as an appendix chapter and preapproved for local adoption. Cities and counties can adopt that appendix chapter without review and approval by the State Building Code Council.

Todd's question is whether Council review and approval is required for local ordinances which differ from the appendix, for example, require sprinklers only in townhouses or in townhouses and single-family dwellings over 5,000 square feet. Ray said the intent, as discussed in the IRC TAG, was that as long as certain technical standards were maintained, Council review and approval wasn't necessary. Tim asked Todd to submit the request in writing, for Council review and a formal decision. He said his initial response was that Council review and approval would be required if it differed from the preapproved amendment. Angie agreed with Tim's initial response. Ray said the TAG concern was that jurisdictions weren't introducing standards or requirements that aren't reflected in the referenced standards. Tim noted, because this is an

important question, it should be in writing so the Council can study it and formally decide on the appropriate response.

Angie asked to be provided with all newly adopted Committee lists.

Tim said all the final rules for the 2009 codes will be available on January 20, 2010. They will be posted on the Council website. He asked members and constituents to get the word out about the new codes which become effective on July 1, 2010. Council staff will work with WABO to print insert pages, hopefully by April 2010. WABO conducts an Education Institute at the end of March/beginning of April about the 2009 codes.

Tim offered code books to members who haven't yet received them.

ADJOURNMENT

Lacking other business, John Cochran adjourned the meeting at 1 p.m.